

ARKANSAS SUPREME COURT

No. CR 06-510

NOT DESIGNATED FOR PUBLICATION

Opinion Delivered June 22, 2006

JACKY LEMLEY
Petitioner

PRO SE MOTION FOR RULE ON
CLERK TO LODGE RECORD AND
MOTION FOR BELATED APPEAL
[CIRCUIT COURT OF DREW
COUNTY, CR 2004-181, CR 2004-174,
HON. ROBERT BYNUM GIBSON, JR.,
JUDGE]

v.

STATE OF ARKANSAS
Respondent

MOTIONS DENIED

PER CURIAM

Petitioner Jacky Lemley entered a plea of guilty to failure to register/failure to comply with the sex offender reporting requirements, second-degree escape and theft by receiving. An aggregate sentence of 180 months' imprisonment was imposed to be served concurrently with petitioner's other criminal sentences. The judgment and commitment order was filed on March 22, 2005, an amended judgment and commitment order was filed on June 20, 2005, and a second amended judgment and commitment order was filed on June 29, 2005.

Petitioner, proceeding *pro se*, filed in the trial court a petition to correct an illegal sentence pursuant to Ark. Code Ann. §16-90-111 (Supp. 2006) on July 8, 2005, and again on October 24, 2005. The trial court denied both petitions in separate orders filed respectively on July 22, 2005, and November 18, 2005. Petitioner additionally filed a motion for credit for time spent in custody, which the trial court denied by order entered August 11, 2005. Petitioner filed his notice of appeal on

December 13, 2005, appealing only the November 18, 2005, order. Petitioner tendered the record on appeal to this court on March 14, 2006.

Now before us are petitioner's *pro se* motions for belated appeal and motion for rule on clerk. The record on appeal was tendered to the clerk of this court on the ninety-first day after the notice of appeal was filed in the trial court, making the record untimely. Both motions, although styled differently, address this single issue. Thus, both motions will be treated as motions for rule on clerk pursuant to Ark. Sup. Ct. R. 2-2(b).

As with all matters before this court, if an appellant fails to follow correct procedural requirements, the burden lies with the appellant to make a showing of good cause for the failure to comply with proper procedure. *See Garner v. State*, 293 Ark. 309, 737 S.W.2d 637 (1987) (*per curiam*). In *McDonald v. State*, 356 Ark. 106, 146 S.W.3d 883 (2004), this court clarified its treatment of motions for rule on clerk and motions for belated appeals in criminal cases. There, we stated that there are only two possible reasons for an appeal not being timely perfected: either the party or attorney filing the appeal is at fault, or, there is "good reason." 356 Ark. at 116, 146 S.W.3d at 891. The fact that an appellant is proceeding *pro se* does not constitute good cause for the failure to conform to the prevailing rules of procedure. *Walker v. State*, 283 Ark. 339, 676 S.W.2d 460 (1984) (*per curiam*); *see also Sullivan v. State*, 301 Ark. 352, 784 S.W.2d 155 (1990) (*per curiam*).

Here, petitioner maintains in his motions that the late tender was the fault of the Drew County Circuit Clerk, inasmuch as "it was the clerk[']s responsibility to get the designation of record to [petitioner] or to the clerk of the AR. Court of Appeals within 90 days of the day it [the notice of appeal] was filed." When proceeding *pro se*, this court has specifically held that it is not the responsibility of the circuit clerk, circuit court, or anyone other than the *petitioner* to perfect an

appeal. *Sullivan, supra*. Petitioner has stated no “good reason” for the late tender of the record. Thus, the appeal was not perfected due to the fault of petitioner and the motions for rule on clerk are denied.

Motions denied.